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3 Attorneys for STATE OF ARIZONA

BY: *Stephanie Kling*

5 **IN THE SUPERIOR COURT**

6 **STATE OF ARIZONA, COUNTY OF YAVAPAI**

7 STATE OF ARIZONA,

V1300CR201080049

8 Plaintiff,

9 vs.

**STATE'S NOTICE OF ERROR IN PLAYING  
OF EXHIBIT 744 DURING AGGRAVATION  
HEARING**

10 JAMES ARTHUR RAY,

11 Defendant.

**(The Honorable Warren Darrow)**

12  
13  
14 Comes now the State of Arizona, through undersigned counsel, and respectfully provides  
15 notice that the State has now compared all of the audio clips played in the State's closing  
16 argument during the Aggravation Hearing to the audio exhibits admitted at trial during the guilt  
17 phase. Based on this review, the State provides notice that approximately one minute of an audio  
18 clip was played in front of the jury during the Aggravation Hearing that was not played for the  
19 jury and admitted during the guilt phase of the trial.

20  
21 Specifically, in arguing the aggravating factor of pecuniary gain, the State played a  
22 portion of an audio clip it believed was included in Exhibit 744, which was admitted and played  
23 to the jury during the guilt phase of the trial. A comparison of the audio clip played during the  
24 Aggravation Hearing to a copy of Exhibit 744 provide by the clerk's office indicates that the clip  
25 played contained approximately 1 minute of audio not included in Exhibit 744. Attached is a  
26 transcript comparing the audio admitted on Exhibit 744 to the audio clip played during the

1 Aggravation Hearing. While the State provides notice to Court and counsel of this error, for the  
2 reasons set forth below, the playing of the clip resulted in no prejudice to Defendant.

3 **I. All of the audio clips played for the jury in the guilt phase of the trial, with the**  
4 **exception of clips played for impeachment purposes, were admitted during the trial.**

5 As noted above, the unadmitted portion of the audio clip was only played during the  
6 aggravation phase of the trial. During trial, Exhibit 744 was played from the actual exhibit which  
7 had been admitted during the testimony of Jennifer Haley. As previously noted in the State's  
8 Notice regarding Exhibit 734 and the State's Opening Statements, all of the audio clips played in  
9 the State's Opening Statement were admitted as Exhibit 734. Accordingly, the State's error in  
10 the Aggravation Hearing had no impact on the guilt phase.  
11

12 **II. Based on the jury's finding that the State failed to prove the Pecuniary Gain,**  
13 **Defendant was not prejudiced by the playing of the unadmitted audio clip at the**  
14 **Aggravation Hearing.**

15 Based on the record, the information on the unadmitted portion of the audio clip was  
16 clearly cumulative. The State played the audio clip at issue in arguing the aggravating  
17 circumstance of pecuniary gain. Specifically, the clip was played to emphasize that Defendant  
18 had told the participants they had made an "investment" to attend Spiritual Warrior. There was  
19 ample evidence of this fact admitted at trial and in multiple forms:

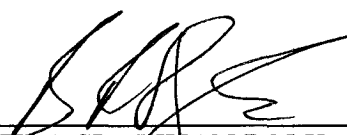
- 20 • Similar words by Defendant are contained in Exhibit 745, admitted at trial and  
21 also played for the jury in the State's Closing Argument during the Aggravation  
22 Hearing. Specifically, the jury heard in Exhibit 745 that Defendant reminded the  
23 participants on Sunday that they had invested a lot of time and money to be there,  
24 and they should not waste time sleeping.
- 25 • Testimony of the participants established the investment they had made to attend  
26 Spiritual Warrior 2009.

- Exhibit 138, the Spiritual Warrior brochure, indicates the "investment" to attend Spiritual Warrior was \$9,695.
- The client files of Kirby Brown and James Shore, that were admitted, indicates the amount they paid to attend.

The playing of the one minute of unadmitted audio must also be found to harmless. The jury found the State had failed to prove the aggravating circumstance of pecuniary gain, and found only the specifically enumerated aggravating circumstance of emotional harm to the victims' families. Clearly, the clip had no effect on the determination of this aggravating circumstance which was essentially conceded by Defendant. The only additional aggravating circumstance found by the jury was that Defendant was in a unique position of trust with victim Lizbeth Neuman. Once again, the information contained on the clip had no impact on the determination of this aggravating circumstance.

Based on the above analysis, the State's submits the error of playing one minute of unadmitted audio during the closing argument in the Aggravation Hearing was harmless, had no impact on the jury's determination of aggravating circumstances, and no prejudice resulted to Defendant.

RESPECTFULLY submitted this 11<sup>th</sup> day of July, 2011.

By  for  
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1 **COPIES** of the foregoing emailed this  
2   11   day of July, 2011:

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**COPIES** of the foregoing delivered this  
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By: 

1 Clip number Sunday 37 02.40.08 to 02.42.02

2 Admitted as Exhibit 744 on 3-8-2011

3 Okay, so so, again, my objective, my intention for you is that and and please understand your not  
4 ever gonna all of us can have a master experience we can have a materialist experience, we have  
5 all these things within us, but where you spend fifty-one percent of your time is where you are in  
6 a particular stage. You can have altered states, states are temporary and you'll have plenty of  
7 altered states experiences this week. You know, one of the reasons, you may have noticed  
8 already that we have a vegetarian cuisine here. You know I'm not a vegetarian and I don't  
9 advocate it. Particularly when you're doing a lot of energy work you know and you need to be  
10 grounded. You look at people who who are vegetarians and by and large they're not very  
11 grounded, why because they just don't have enough protein within them. However I don't want  
12 you grounded here. I want you off balance. Balance is bogus anyway. I want you off a little bit. I  
13 want you out of your traditional patterns because, because to the degree you're not grounded  
14 then and that's why we have a vegetarian cuisine here. So like it or not like it, you're out here  
15 and the electric fences are on okay so and they ain't turned off for five days now. So but there's  
16 a reason for everything we'll doing here. I want you to get out of your traditional ways of  
17 behaving, because in that way I can push your threshold, you can push your threshold and I can  
18 facilitate that and you open up to greater opportunities. Okay.

13 Clip played in Aggravation Hearing, Closing Argument

14 Sunday (Starts at Sunday 02.38.54)

15 Highlighted portion is not contained in Exhibit 744

16 Really truly set on bending commitment I'm really going to do whatever it takes no matter how  
17 uncomfortable it is no matter how frightening, then you will have a breakthrough. You may feel  
18 as if you're having a breakdown some point in time and that's okay because sometimes the walls  
19 must come down so that new walls may be built. But I promise you you'll have a breakthrough  
20 and that's what you really want isn't it. I mean isn't that why you made the investment to be here  
21 and you trudged off to the desert to sleep in a tent and share bathrooms. You know I mean some  
22 of you are already having a breakdown. For the amount of money I spent you think I'd have my  
23 own shower and my roommate snores (laughter), but a least he's consciously aware of that and  
24 so again

22 (Picks up on the above clip)

23 Okay, so so, again, my objective, my intention for you is that and and please understand your not  
24 ever gonna all of us can have a master experience we can have a materialist experience, we have  
25 all these things within us, but where you spend fifty-one percent of your time is where you are in  
26 a particular stage. You can have altered states, states are temporary and you'll have plenty of  
altered states experiences this week.

Exhibit A